

ESTTA Tracking number: **ESTTA273573**

Filing date: **03/23/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|--|
| Name | JIMLAR CORPORATION |
| Granted to Date of previous extension | 03/25/2009 |
| Address | 160 Great Neck Road Great Neck, NY 11021 UNITED STATES |

| | |
|----------------------|--|
| Attorney information | Robert L. Epstein Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com |
|----------------------|--|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 78962182 | Publication date | 11/25/2008 |
| Opposition Filing Date | 03/23/2009 | Opposition Period Ends | 03/25/2009 |
| Applicant | Fry's Electronics, Inc. Legal Dept. 600 E. Brokaw Rd. San Jose, CA 95112 UNITED STATES | | |

Goods/Services Affected by Opposition

| |
|---|
| Class 009. Opposed goods and services in the class: laptop carrying cases; photographic equipment bags; keyfob with electronic signal transponder |
| Class 025. All goods and services in the class are opposed, namely: Shoes and clothing, namely, shirts, blouses, jackets, pants, hats, gloves, belts, ties, skirts, dresses, sweatshirts and socks |
| Class 028. Opposed goods and services in the class: bags, gloves |

Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Marks Cited by Opposer as Basis for Opposition

| | | | |
|-------------------|---------|------------------|------------|
| U.S. Registration | 2191093 | Application Date | 01/08/1998 |
|-------------------|---------|------------------|------------|

| | | | |
|---------------------|---|-----------------------|------|
| No. | | | |
| Registration Date | 09/22/1998 | Foreign Priority Date | NONE |
| Word Mark | FRYE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 025. First use: First Use: 1952/01/01 First Use In Commerce: 1952/01/01 boots and shoes of leather and/or synthetic materials | | |

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1093784 | Application Date | 09/08/1976 |
| Registration Date | 06/20/1978 | Foreign Priority Date | NONE |
| Word Mark | FRYE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 018. First use: First Use: 1976/08/27 First Use In Commerce: 1976/08/27 HANDBAGS | | |

| | | | |
|-----------------------------------|------------------------|------------------|------|
| U.S. Application/Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | FRYE | | |
| Goods/Services | shirts, bags, key fobs | | |

| | |
|-------------|---|
| Attachments | DOC032309frys.pdf (16 pages)(326087 bytes) |
|-------------|---|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|---------------------|
| Signature | /William C. Wright/ |
| Name | William C. Wright |
| Date | 03/23/2009 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|--------------------------------|---|-------------------------------------|
| JIMLAR CORPORATION |) | |
| d/b/a The Frye Company |) | |
| |) | |
| Opposer |) | |
| |) | |
| v. |) | Opposition No. _____ |
| |) | Serial No.: 78/962182 |
| |) | Mark: FRY'S.COM OPEN & Design |
| |) | Filing Date: August 28, 2006 |
| FRY'S ELECTRONICS, INC. |) | Publication Date: November 25, 2008 |
| |) | |
| Applicant. |) | |

NOTICE OF OPPOSITION

Jimlar Corporation, d/b/a/ The Frye Company, a New York corporation located and doing business at 160 Great Neck Road, Great Neck, New York 11021 (hereinafter "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 78/621182 in Classes 9, 25 and 28, filed by Fry's Electronics, Inc. (hereinafter "Applicant") on August 28, 2006, and hereby opposes said Application Serial No. 78/962182 in so far as it relates to those classes.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessors in interest, have engaged, and Opposer is now engaged in the distribution, promotion and/or sale in interstate commerce of clothing including footwear and shirts, key fobs, as well as handbags and an ever expanding range of bags of various kinds.
2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessors in interest, have used, and Opposer is now using Opposer's FRYE trademark in connection with clothing including footwear and shirts, key fobs as well as

handbags and on ever expanding range of bags of various kinds distributed, promoted and/or sold by Opposer.

3. Opposer is owner of, and will rely herein, upon the following Federal Trademark registrations:

| MARK | REG. NO. | ISSUE DATE | GOODS |
|------|-----------|------------|--|
| FRYE | 2,191,093 | 9/22/1998 | Boots and leather and/or synthetic materials in Class 25 |
| FRYE | 1,093,784 | 6/20/1979 | Handbags in Class 18 |

The above registrations are valid, subsisting and conclusive evidence of Opposer's exclusive right to use the registered FRYE mark in commerce for the goods specified in said registrations. Exhibits A and B hereto respectively show copies of said registrations and current printouts of information from the electronic database records of the United States Patent and Trademark Office showing current status and title thereof.

4. In addition to the registered marks specified above, Opposer shall rely herein upon its common law usage of its FRYE trademark on shirts, bags of various kinds and on key fobs. Given the widespread favorable public recognition of FRYE trademark, use on these other products is a natural extension of Opposer's earlier usage on footwear and handbags.

5. Opposer had made substantial investment in advertising and promoting its goods under Opposer's FRYE trademark since it acquired The Frye Company. Opposer and its predecessors in interest extensively used, advertised, promoted and offered goods bearing Opposer's FRYE trademark to the public through various channels of trade in

commerce for many years prior to the filing of Applicant's application, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's FRYE trademark and associate the same with Opposer and/or the goods sold or provided by Opposer.

6. As a result of the aforesaid advertising, promotion and sale, Opposer's FRYE trademark had become well known and recognized by the public and associated with Opposer well prior to the filing of the opposed application and/or well prior to the Applicant's actual use or intended use of the mark of the opposed application.

7. Notwithstanding Opposer's rights in and to Opposer's FRYE trademark, on August 28, 2006, Applicant filed an Intent to Use application for registration of FRYS.COM OPEN in Design, for goods including "laptop carrying cases"; photographic equipment bags" and "key fob with electric signal transponder" in International Class 9, for "shoes and clothing, namely, shirts, blouses, jackets, pants, hats, gloves, belts, ties, skirts, dresses, sweatshirts and socks, in International Class 25, and for "bags" and "gloves" in International Class 28. Said application was assigned Serial No. 78/962182, and was published for Opposition in the Official Gazette of November 25, 2008.

8. The aforementioned goods for which Applicant seeks registration of FRYS.COM OPEN in Design are the same as, similar to or commercially related to the goods upon which Opposer has used and currently uses its FRYE trademark and move through substantially the same channels of trade as do Opposer's goods.

9. FRYS.COM OPEN in Design, the mark of the opposed application, is dominated by "FRYS" and has ".COM" and "OPEN" disclaimed. As a result, Applicant's mark so resembles Opposer's FRYE trademark, as to be likely, when applied

to the aforementioned goods for which Applicant seeks registration, to cause confusion or mistake or to deceive purchasers and potential purchases as to the source thereof, resulting in damage and detriment to Opposer and its reputation.

10. Opposer avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of to the aforementioned goods to be marketed under Application's alleged FRYS.COM OPEN in Design mark and misled into believing that such goods emanate from, or are licensed by, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

11. Opposer avers that it will be damaged by the registration by Applicant of the alleged FRYS.COM OPEN in Design trademark, as set forth in Applicant's Trademark Application Serial No. 78/962,182, in that the mark is substantially similar to Opposer's FRYE trademark and common law rights, and in view of the high degree of public knowledge and recognition of Opposer's FRYE trademark and of the goods offered to the public by Opposer under Opposer's FRYE trademark, and the close relationship between the goods of the respective parties, the aforementioned goods for which Applicant seeks registration will be mistakenly presumed to emanate from or be licensed by, approved by or otherwise connected with Opposer, either directly or indirectly.

Wherefore, Opposer, Jimlar Corporation, d/b/a The Frye Company, believes and avers that it is being and will continue to be damaged by registration of the alleged FRYS.COM OPEN & Design mark as aforesaid, and prays that said Application Serial No. 78/962,182 be rejected, in so far as it relates to the aforementioned goods in

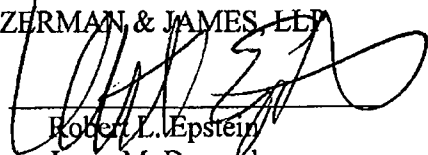
International Classes 9, 25 and 28, that no registration for those classes be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Dated: March 23, 2009

Respectfully submitted,

EPSTEIN DRANGEL
BAZERMAN & JAMES, LLP

By:



Robert L. Epstein
Jason M. Drangel
William C. Wright
60 East 42nd Street, Suite 820
New York, New York 10165
Tel.No. (212) 292-5390
Fax. No.(212) 292-5391

Attorneys for Opposer

EXHIBIT A

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,191,093

Registered Sep. 22, 1998

**TRADEMARK
PRINCIPAL REGISTER**

FRYE

**PHILIP'S GROUP, INC. (MASSACHUSETTS
CORPORATION)
ONE ELM SQUARE
ANDOVER, MA 01810**

**FIRST USE 1-1-1952; IN COMMERCE
1-1-1952.
OWNER OF U.S. REG. NOS. 1,084,873, 1,994,452
AND OTHERS.
SEC. 2(F).**

**FOR: BOOTS AND SHOES OF LEATHER
AND/OR SYNTHETIC MATERIALS, IN CLASS
25 (U.S. CLS. 22 AND 39).**

SER. NO. 75-415,454, FILED 1-8-1998.

ODETTE BONNET, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-03-20 09:16:10 ET

Serial Number: 75415454 Assignment Information Trademark Document Retrieval

Registration Number: 2191093

Mark (words only): FRYE

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2008-09-12

Filing Date: 1998-01-08

Transformed into a National Application: No

Registration Date: 1998-09-22

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-09-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Jimlar Corporation

Address:

Jimlar Corporation
160 Great Neck Road
Great Neck, NY 11021
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

Class Status: Active

boots and shoes of leather and/or synthetic materials

Basis: 1(a)

First Use Date: 1952-01-01

First Use in Commerce Date: 1952-01-01

ADDITIONAL INFORMATION

Section 2(f)

Prior Registration Number(s):

1084873

1093784

1110961

1244640

1990286

1994452

MADRID PROTOCOL INFORMATION

USPTO Reference Number: A0012041

International Registration Number: (NOT AVAILABLE)

International Registration Date: (DATE NOT AVAILABLE)

Original Filing Date with USPTO: 2008-04-11

International Registration Status: Response To Irregularity Received From Applicant

Date of International Registration Status: 2008-07-23

International Registration Renewal Date: (DATE NOT AVAILABLE)

Irregularity Reply by Date: 2008-07-25

Madrid History:

07-24-2008 - 21:02:20 - Irregularity Response Sent To IB

07-24-2008 - 10:51:37 - Response To Irregularity Reviewed And Accepted

07-23-2008 - 16:56:43 - Irregularity Response Received From Applicant

04-28-2008 - 09:14:09 - Irregularity Notice Received From IB (Response Required)

04-11-2008 - 21:00:46 - IR Certified And Sent To IB

04-11-2008 - 16:09:11 - Manually Certified

04-11-2008 - 11:51:53 - New Application For IR Received

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-09-12 - First renewal 10 year

2008-09-12 - Section 8 (10-year) accepted/ Section 9 granted

2008-09-04 - Assigned To Paralegal

2008-08-29 - TEAS Section 8 & 9 Received

2007-08-03 - Case File In TIGRS

2003-12-08 - Section 8 (6-year) accepted & Section 15 acknowledged

2003-10-14 - Section 8 (6-year) and Section 15 Filed

1998-09-22 - Registered - Principal Register

1998-06-30 - Published for opposition

1998-05-29 - Notice of publication

1998-04-28 - Approved for Pub - Principal Register (Initial exam)

1998-04-22 - Examiner's amendment mailed

1998-04-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert L. Epstein

Correspondent

Robert L. Epstein

EPSTEIN DRANGEL BAZERMAN & JAMES, LLP

60 East 42nd Street, Suite 820

New York NY 10165

Phone Number: 212-292-5390

Fax Number: 212-292-5391



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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** 75415454**Filing Dt:** 01/08/1998**Reg #:** 2191093**Reg. Dt:** 09/22/1998**Registrant:** Philip's Group, Inc.**Mark:** FRYE**Assignment: 1****Reel/Frame:** 1805/0813**Received:** 10/30/1998**Recorded:** 10/22/1998**Pages:** 4**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** PHILIP'S GROUP, INC.**Exec Dt:** 10/14/1998**Entity Type:** CORPORATION**Citizenship:** MASSACHUSETTS**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** JIMLAR CORPORATION

160 GREAT NECK ROAD

GREAT NECK, NEW YORK 11021

Correspondent: JAMES & FRANKLIN

ROBERT L. EPSTEIN, ESQ.

60 EAST 42ND STREET, SUITE 1217

NEW YORK, NEW YORK 10165

Search Results as of: 03/20/2009 09:17 AM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
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EXHIBIT B

Int. Cl.: 18

Prior U.S. Cl.: 3

United States Patent and Trademark Office

Reg. No. 1,093,784
Registered June 20, 1978

TRADEMARK
Principal Register

FRYE

John A. Frye Shoe Company, Inc. (Massachusetts corporation)
84 Chestnut St.
Marlboro, Mass. 01752

For: HANDBAGS, in CLASS 18 (U.S. CL. 3).
First use Aug. 27, 1976; in commerce Aug. 27, 1976.
Owner of Reg. No. 1,039,722.

Ser. No. 99,229, filed Sept. 8, 1976.

B. A. CHAPMAN, Examiner

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-03-20 09:19:40 ET

Serial Number: 73099229 Assignment Information Trademark Document Retrieval

Registration Number: 1093784

Mark (words only): FRYE

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 1998-03-05

Filing Date: 1976-09-08

Transformed into a National Application: No

Registration Date: 1978-06-20

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-12-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. JIMLAR CORPORATION

Address:

JIMLAR CORPORATION
160 GREAT NECK ROAD
GREAT NECK, NY 11021
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 018

Class Status: Active

HANDBAGS

Basis: 1(a)

First Use Date: 1976-08-27

First Use in Commerce Date: 1976-08-27

ADDITIONAL INFORMATION

Section 2(f)

Prior Registration Number(s):

1039722

MADRID PROTOCOL INFORMATION

USPTO Reference Number: A0012041

International Registration Number: (NOT AVAILABLE)

International Registration Date: (DATE NOT AVAILABLE)

Original Filing Date with USPTO: 2008-04-11

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2007-12-19 - Case File In TIGRS

1998-03-05 - First renewal 10 year

1998-01-30 - Section 9 filed/check record for Section 8

1984-04-10 - Section 8 (6-year) accepted & Section 15 acknowledged

Opposition No. _____
Serial No.: 78/962182
Mark: FRYS.COM OPEN & Design
Filing Date: August 28, 2006
Publication Date: November 25, 2008

Robert L. Epstein